

**KENTUCKY PERSONNEL BOARD  
MINUTES OF SEPTEMBER 19, 2008**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on, September 19, 2008, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman  
Christine J. Goodmann, Vice-Chairman  
Lisa T. Hendricks, Member  
Robert B. Frazer, Member  
M. Suzanne Cassidy, Member  
Julie True, Member  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

Board personnel absent:

Betty Gibson, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD AUGUST 8, 2008**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Higgins asked for additions or corrections. Mr. Frazer moved to approve the minutes as submitted. Ms. Goodmann seconded, and the motion carried 4-0. (Chairman Higgins does not vote unless noted.) The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT:**

Mr. Sipek updated the Board members on pending investigations as follows:

a. Returning Retirees – Concerning whether agencies were willing to hire returning retirees. Written report will be presented to the Board Members at the November Board Meeting.

- b. Rebecca Smith – Ms. Smith was fired from Thomson-Hood. Although ordered reinstated she did not come back to work. Written report will be presented to the Board Members at the November Board Meeting.
- c. Starting salaries for new employees versus long-time employees pursuant to 101 KAR 2:034. An investigation was initiated after several appeals had been filed with the Personnel Board. A report will hopefully be completed by the December Board meeting.
- d. Doug Doerting – The investigation is still open with several issues worth looking at.
- e. Patton Database – Has not been looked at for a long time. A framework for completion is not known at this time. However, the goal is to have both the Doerting and Patton Database continue and to keep the Board updated on the progress of these investigations.

Mr. Sipek noted that the Board members were provided a copy of the Court of Appeals' Opinion Affirming the Personnel Board's ruling pertaining to Steve Alvey, which was rendered by Judge Acree on September 12, 2008; not to be published. Mr. Sipek advised that he had spoken with the Hon. David Emerson, Appellant's counsel, and that Mr. Emerson may request discretionary review. Also, the Board received a copy of the Franklin Circuit Court's Order denying the Petitioner's Motion to Alter, Amend or Vacate the Court's Order granting attorney fees and costs pertaining to Lowell Workman.

Chairman Higgins asked about reviewing proposed legislation. Mr. Sipek stated that since there were only three weeks to the next Board Meeting and the possibility of a light agenda, next month would give the Board time to review proposed legislation.

At the conclusion of Mr. Sipek's report, Mr. Crocker read the Resolution of the Kentucky Personnel Board to honor Mr. Dan Egbers, Executive Director of the Office of Legal Services, Personnel Cabinet, in recognition of his long service in state government and his approaching retirement at the end of the month. Upon the Board Members having signed the resolution, Mr. Crocker presented it to Mr. Egbers. Mr. Egbers was delighted and stated it was a pleasure to work with the Board, which he has practiced before for 27 years. Chairman Higgins then called for the Personnel Cabinet's Report.

#### 4. **PERSONNEL CABINET'S REPORT:**

Dan Egbers, Executive Director for Office of Legal Services, was present for the Personnel Cabinet and reported the following:

Mr. Egbers reported that the 2009 Employees Health Plan was too involved to elaborate on all the details, so he touched on the high points. Some of the high points: All plans will offer unlimited lifetime maximums, the premium will be the same no matter what county an employee lives in, open enrollment is mandatory, provide uniform coverage across the

Commonwealth, encourage a healthier lifestyle, provide preventative care, smokers' status may be changed during the year, and extended coverage for unmarried dependents to age 25. A series of eighteen Benefit Fairs will begin October 2, 2008, through October 16, 2008. Mr. Egbers recommended going to the Personnel Cabinet's website for a more detailed review.

All employees in a health plan will enjoy a one-time "premium holiday" in December 2008 as insurance premiums will no longer be collected a month in advance. Beginning January 2009 health plans will be moving from a pre-pay premium to a current pay premium. This shift in pay will provide the Commonwealth a one-time savings of \$56 million in general funds, which will help with the budget shortfall.

The 2008 Deferred Compensation Expo is scheduled for Louisville, Somerset and Frankfort from September 23 through September 25, 2008.

Public Service Recognition Week is October 6 through 12, 2008.

Mr. Egbers advised that the Governor's Employee Advisory Council's (GEAC) Master Agreement was signed by the Governor.

Mr. Egbers stated that upon his retirement September 30, 2008, the Hon. Dinah Bevington will be filling his position.

At the conclusion of the Personnel Cabinet's report, Chairman Higgins called the parties to come forward for the petitioned positions.

## **5. PETITIONED POSITIONS:**

- A. Public Service Commission, Energy and Environment Cabinet  
-- Executive Advisor
- B. Public Service Commission, Energy and Environment Cabinet  
-- Special Assistant

Present were Mr. Dave Dooley, Human Resources Manager, and the Hon. David Samford, Deputy Executive Director and General Counsel. Both of the requested positions are primarily policy-making positions. Mr. Dooley explained that both positions are non-merit, are fully budgeted for the current fiscal year, and are approved by the Personnel Cabinet.

Ms. Goodmann moved to approve the petitioned positions, Executive Advisor and Special Assistant. Ms. Cassidy seconded and the motion carried 4-0.

Chairman Higgins then called the parties forward for oral arguments.

6. **ORAL ARGUMENTS:**

- A. Robert Bickett v. Justice and Public Safety Cabinet  
[Passed from August meeting by agreement of the parties.]

Present were the Appellant, Robert Bickett, the Hon. Elmer George, counsel for the Appellant, and the Hon. Jim Godsey, counsel for the Appellee, who had requested oral arguments. The parties answered questions from the Board. However, Ms. Cassidy recused herself from taking any part in this case.

- B. Kenneth Fogle v. Justice and Public Safety Cabinet – 2 appeals

Present were the Appellant, Kenneth Fogle, the Hon. Nicholas Nighswander, counsel for the Appellant, who had requested oral arguments, and the Hon. Will Fogle, counsel for the Appellee. The parties answered questions from the Board.

After the parties presented oral arguments, Chairman Higgins announced a short break (10:45 a.m.).

- C. Hassan Rezaei v. Justice and Public Safety Cabinet

Present were the Appellant, Hassan Rezaei, *pro se*, who had requested oral arguments, and the Hon. Joslyn Olinger, counsel for the Appellee. The parties answered questions from the Board.

- D. Hassan Rezaei v. Justice and Public Safety Cabinet – 4 appeals –

Present were the Appellant, Hassan Rezaei, *pro se*, who had requested oral arguments, and the Hon. Joslyn Olinger, counsel for the Appellee. The parties answered questions from the Board.

After all the oral arguments were presented, the newest Board Member appointed by Governor Beshear, Ms. Julie True, was introduced. Ms. True was sworn in by General Counsel Boyce A. Crocker. Ms. True's presence at the Board Meeting was brief and she did not participate in any discussions, nor did she vote. (11:33 a.m.) Chairman Higgins then asked the parties to come forward to argue the motion before the Board.

7. **MOTIONS:**

- A. Joseph Lile v. Justice and Public Safety Cabinet  
--Motion for Board to Order Appellant Returned to Work with Back Pay  
--Appellee's Response to Motion

Present were the Hon. Paul Fauri, counsel for the Appellant, and the Hon. Will Fogle, counsel for the Appellee. The parties answered questions from the Board.

## 8. REQUESTS FOR INVESTIGATION:

- A. Transportation Cabinet Reorganization – Request by Randall Arvin
  - Response by Personnel Cabinet (Hon. Daniel F. Egbers)
  - Response of Transportation Cabinet (Hon. Robert L. Russell)
  - (Deferred from August meeting)

Present were Randall Arvin and the Hon. Ed Logan, counsel for the Transportation Cabinet. The parties were invited to attend the September Board Meeting in order to answer questions from the Board. Mr. Logan stated that Ms. Trinta Cox, who has knowledge of the issues, is extremely ill. However, he would like to obtain a written statement from Ms. Cox to present to the Board addressing the issues. Chairman Higgins asked Mr. Arvin if he would not mind coming back after the Board has heard from Ms. Cox. Mr. Arvin agreed to come back.

Mr. Crocker asked Mr. Arvin whether he had filed an appeal. Mr. Arvin stated that he had, but it was a “stopgap” measure. Mr. Logan asked whether the Board had any additional issues they wanted addressed. Chairman Higgins asked Mr. Arvin to respond. Mr. Arvin stated that to simplify the matter, he does not object to the reorganization; however, he stated that he objects to the interview process which sidestepped all the personnel rules. Chairman Higgins stated that if that was also the subject of Mr. Arvin’s appeal, the investigation could be held in abeyance pending the outcome of the appeal and that no written statement would be needed from Ms. Cox. Mr. Arvin said the appeal was only about his position. The investigation was to throw out the whole interview process. Chairman Higgins asked that Ms. Cox reply. Mr. Logan advised that he understood the issues and would have Ms. Cox reply only in regards to the interview process. Mr. Arvin offered to drop the appeal if it would simplify matters. Chairman Higgins advised that he was not asking Mr. Arvin to do that.

Chairman Higgins stated that he would like to defer the matter so that the Board could request a response from Ms. Trinta Cox. The parties were asked to return for the October Board Meeting.

Ms. Hendricks moved to defer this matter to the next meeting of the Board. Ms. Cassidy seconded and the motion carried 4-0. [Ms. Julie True, newly appointed Board Member, did not participate in discussions, nor did she vote.]

## 9. CLOSED SESSION:

Mr. Frazer moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Hendricks seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as

follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 4-0. (11:58 a.m.)

Mr. Frazer moved to return to open session. Ms. Cassidy seconded and the motion carried 4-0 (12:22 p.m.)

**10. CASE TO BE DECIDED:**

The Board reviewed the following case. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

B. Kenneth Fogle v. Justice and Public Safety Cabinet – 2 appeals

Mr. Frazer moved to note Appellant's exceptions and response, Appellee's exceptions and response, and oral arguments and to accept the recommended order dismissing Appeal No. 2007-071 and sustaining in part and dismissing in part Appeal No. 2007-178. Ms. Cassidy seconded and the motion carried 4-0.

**11. SECOND CLOSED SESSION:**

Ms. Hendricks moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Cassidy seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 4-0. (12:24 p.m.)

Mr. Frazer moved to return to open session. Ms. Hendricks seconded and the motion carried 4-0. (1:28 p.m.)

**12. MOTIONS:**

- A. Joseph Lile v. Justice and Public Safety Cabinet  
--Motion for Board to Order Appellant Returned to Work with Back Pay  
--Appellee's Response to Motion

Ms. Cassidy moved to deny Appellant's Motion for Board Order. Mr. Frazer seconded and the motion carried 4-0.

13. **CASES TO BE DECIDED:**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Robert Bickett v. Justice and Public Safety Cabinet  
(Passed to September meeting by Agreement of the parties.)

Mr. Frazer moved to note Appellee's exceptions and oral arguments and to accept the recommended order sustaining the appeal as to the involuntary transfer and dismissing the appeal as to retaliation. Ms. Goodmann seconded and the motion carried 2-0, with Ms. Cassidy recusing and Ms. Hendricks abstaining.

C. Hassan Rezaei v. Justice and Public Safety Cabinet

Ms. Cassidy moved to note Appellant's request and oral arguments and to accept the recommended order sustaining the appeal, and that the Appellant be made whole. Ms. Hendricks seconded and the motion carried 4-0.

D. Hassan Rezaei v. Justice and Public Safety Cabinet – 4 appeals

Mr. Frazer moved to note Appellant's request, Appellee's exceptions and oral arguments and to accept the recommended order, with clerical correction, dismissing two appeals and sustaining to the extent two appeals. Ms. Cassidy seconded and the motion carried 4-0.

E. Erasto Moran v. Cabinet for Health and Family Services

Ms. Hendricks moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Ms. Goodmann seconded and the motion carried 4-0.

F. Jennifer Durham v. Cabinet for Health and Family Services

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 4-0.

G. Ballard Parsons v. Transportation Cabinet

Ms. Goodman moved to accept the recommended order dismissing the appeal. Mr. Frazer seconded and the motion carried 4-0.

H. Deborah Redmon v. Education and Workforce Development Cabinet –

Mr. Frazer moved to accept the recommended order sustaining the appeal. Ms. Cassidy seconded and the motion carried 4-0.

I. James Taylor v. Justice and Public Safety Cabinet (3 appeals)

Ms. Hendricks moved to accept the recommended order dismissing two appeals and sustaining one appeal to the extent that the three-day suspension be rescinded. Mr. Frazer seconded and the motion carried 3-0, with Ms. Cassidy recusing.

**Show Cause Orders – No Response Filed – Appeals Dismissed**

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellants to the show cause orders.

- J. David Ermond v. Cabinet for Health and Family Services
- K. Rebecca Hall v. Justice and Public Safety Cabinet
- L. Naklisha Hickman v. Cabinet for Health and Family Services
- M. Kimberley Risner v. Cabinet for Health and Family Services
- N. Taren Walton v. Justice and Public Safety Cabinet
- O. Charles Weaver v. Transportation Cabinet
- P. Terressia Whitley v. Cabinet for Health and Family Services

Mr. Frazer moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Ms. Hendricks seconded and the motion carried 4-0.

**Show Cause Orders – Response Filed**

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute. The Appellants filed responses.

- Q. Darlene Roberts and Mary Thompson v. Transportation Cabinet  
--Appellants' Response (returned as untimely)



Ms. Cassidy moved to accept the recommended order dismissing the appeal as the Appellants' response was untimely. Ms. Goodmann seconded and the motion carried 4-0.

- R. Harold Shines v. Public Protection Cabinet  
--Appellant's Response

Mr. Frazer moved to note Appellant's response and finding the Appellant had not shown sufficient cause for failure to appear at the hearing, accept the Hearing Officer's recommended order dismissing the appeal. Ms. Hendricks seconded and the vote was 2-2, with Ms. Cassidy and Ms. Goodmann opposing. [Note: Chairman Higgins did not vote. With a tied vote this matter was tabled to the next meeting of the Board.]

#### 14. **WITHDRAWALS:**

Mr. Frazer moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Hendricks seconded and the motion carried 4-0.

- A. Tamma Adkins v. Department of Veterans Affairs
- B. Billy Benton v. Energy and Environment Cabinet
- C. Ronald B. Crain v. Public Protection Cabinet
- D. Laura Evans v. Health and Family Services and Personnel Cabinet
- E. Wendy Floyd v. Cabinet for Health and Family Services
- F. Harolyn Howard v. Department of Public Advocacy
- G. Sandy Jackson v. Transportation Cabinet
- H. Christina Jones v. Personnel Cabinet
- I. Gail Linton v. Justice and Public Safety Cabinet (3 appeals)
- J. Kyle Martin v. Personnel Cabinet
- K. Donna Rice v. Personnel Cabinet
- L. Kenneth C. Smith v. Cabinet for Health and Family Services (2008-207)

#### 15. **SETTLEMENTS:**

Ms. Cassidy moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Ms. Hendricks seconded and the motion carried 4-0.

- A. Kimberly Cribbs v. Department of Public Advocacy
- B. Edward Davis v. Tourism, Arts and Heritage Cabinet
- C. Rick Jones v. Justice and Public Safety Cabinet
- D. Thaddeus Miller v. Justice and Public Safety Cabinet
- E. William Craig Moberly v. Cabinet for Health and Family Services (2 appeals)
- F. Leslie Wainscott v. Justice and Public Safety Cabinet (2 appeals)
- G. Melinda Weathers v. Justice and Public Safety Cabinet
- H. Jeffrey Lewis v. Justice and Public Safety Cabinet

I. David Scott v. Justice and Public Safety Cabinet

16. **OTHER:**

The Board Members agreed to accept the Personnel Cabinet's invitation to visit their offices after the October Board Meeting.

Further, with a light agenda expected, the Board Members agreed to review proposed legislation after the October Board Meeting.

Chairman Higgins asked if there was any further business, which Mr. Sipek advised there was not.

There being no further business, Ms. Hendricks moved to adjourn. Ms. Cassidy seconded and the motion carried 4-0. (1:37 p.m.)

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Greg Higgins, Chairman

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Christine J. Goodmann, Vice-Chairman

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Betty Gibson, Member

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Lisa T. Hendricks, Member

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Robert B. Frazer, Member

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M. Suzanne Cassidy, Member